FATIMAH HIEW YEN WON & ANOR A

v.

SAROJA PALANIAPPAN & ANOR

HIGH COURT SABAH & SARAWAK, KOTA KINABALU B
ABDUL RAHMAN SEBLI J
[SUIT NO: K22-47-2011]
28 MAY 2012

PARTNERSHIP: *Termination - Dissolution - Dissolution of firm - Whether dissolution of partnership resulted in dissolution of firm as going concern - Whether there still exists any relation subsisting between persons carrying on business within meaning of ss. 3 and 6 of Partnership Act 1961 - Whether dissolution a general dissolution or technical dissolution - Partnership Act 1961, s. 34(1)(c) - Whether remaining partners could still carry on with business of firm and its name - Whether plaintiffs' claims sustainable* C D

The first plaintiff founded the law firm of Messrs United Law Firm ('the firm') and was later joined by the first defendant as partner, followed by the second plaintiff and the second defendant whereby a Memorandum of Understanding cum Partnership Agreement ('the partnership agreement') was signed between them. A few months later, the two defendants decided to leave the firm with the intention of setting up a legal firm of their own. A series of untoward incidents occurred and on 27 January 2011, the first defendant, assisted by four employees of the firm, carted away more than 600 files and other documents from the business premises of the firm. The plaintiffs claimed, *inter alia*, for the following reliefs: (i) that the defendants be ordered to deliver up all the 600 files; (ii) that the defendants make a public apology to the plaintiffs; and (iii) a declaration that the plaintiffs as continuing partners of the United Law Firm were entitled to carry out their legal practice under the name and style of 'United Law Firm'. The defendants, however, disputed the claim and counterclaimed, *inter alia*, for the following reliefs: (i) a declaration that the firm 'United Law Firm' had been dissolved by mutual consent of all its previous partners; (ii) an order restraining the plaintiffs from practicing and continuing to practice law including carrying out any conveyancing work under the name of 'United Law Firm'; and (iii) an order that a receiver and manager be appointed to wind E F G H I

A up the business of 'United Law Firm.' The issue that arose was whether the dissolution of the partnership resulted in the dissolution of 'United Law Firm' as a going concern.

Held (dismissing plaintiffs' claim; allowing defendants' counterclaim):

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(1) Since a firm and the partners are one and the same entity, it follows that when a partnership is dissolved, the business of the firm must come to an end because once the partnership is dissolved, there is no longer any relation 'which subsists between persons carrying on business with a view to profit' within the meaning of ss. 3 and 6 of the Partnership Act 1961 ('the Act'). Persons carrying on business means all the partners and not just the 'remaining parties' because a partnership by definition is a business relation which subsists between the partners, in this case the four parties to the Partnership Agreement. When the relation ceases to subsist by reason of dissolution, the partnership ceases to exist. *A fortiori*, the firm must likewise cease to exist. (para 16)

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E **(2)** Since the partners had made their intention clear to dissolve the partnership and the plaintiffs had failed to produce any evidence to prove the existence of any agreement to avoid dissolution by operation of s. 34(1)(c) of the Act, the dissolution was a 'general' dissolution and not a 'technical' dissolution (*Sukhinderjit Singh Muker v. Arumugam Deva Rajah*; foll). (para 19)

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(3) The phrase 'subject to any agreement between the partners' appearing in s. 34 of the Act means subject to any agreement between the partners prior to dissolution, not after. The agreement can be any agreement allowed by law *ie*, they can even agree that mere service of the notice of dissolution by a partner shall not be sufficient to dissolve the partnership. However, in the present case, the partnership agreement contained no such agreement. Therefore, dissolution took effect after the notice of intention to dissolve was given by the defendants. An agreement to avoid dissolution under s. 34 of the Act must be clear and unambiguous. (paras 24 & 25)

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I **(4)** There was no evidence that the partners had agreed to allow the plaintiffs to continue practising under the firm name of 'United Law Firm.' No concluded agreement had been reached between the partners on the use of the firm name

after the dissolution. Proposals and counter proposals were exchanged between the parties but nothing concrete was decided. In particular, there was no agreement on who should be the 'continuing partners'. There was also evidence by the defendants that the first plaintiff told them that nobody could use the firm's name after the dissolution. This evidence was not challenged at all in the cross-examination and was therefore deemed to be admitted *(Aik Ming (M) Sdn Bhd & 8 Ors v. Chang Ching Chuen & Ors)*. The plaintiffs were therefore estopped from contending that there was such agreement by the defendants. (paras 28 & 30)

(5) The plaintiffs had failed to identify or led evidence on the identity of the 600 files and other documents that they wanted the court to order the defendants to deliver up and to whom the files and documents were to be delivered. The claim therefore lacked precision and must be rejected. Further, regarding the plaintiffs' prayer for an order that the defendants publish a public apology to them, they had failed to plead any cause of action to justify the grant of the order *ie*, libel or slander. The claim was therefore unsustainable and ought to be refused. (paras 34 & 37)

(6) The key issue in this case was thus decided in favour of the defendants for the reason that 'United Law Firm' had properly been dissolved along with the dissolution of the partnership. Where a partnership firm has ceased to exist, it is idle to argue that the 'remaining partners' can still carry on with the business of the firm and in its name. It was therefore untenable for the plaintiffs to continue practising under the firm name of 'United Law Firm' as a going concern. (para 38)

Case(s) referred to:

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors [1995] 3 CLJ 639 CA ***(refd)***

Ang Swee Chuan v. Lim Teng Huan [1992] 1 CLJ 529; [1992] 4 CLJ (Rep) 177 CA ***(refd)***

Fishenden v. Higgs and 475 Hill, Ltd [1935] All ER (Rep) 435 ***(refd)***

Floydd v. Cheney & Anor [1970] 1 Ch 602 ***(dist)***

Haji Mohamed Dom v. Sakiman [1955] 1 LNS 26 HC ***(refd)***

Hudgell Yeates & Co v. Watson [1978] 2 WLR 661 ***(dist)***

Keow Seng & Company v. Trustees of Leong San Tong Khoo Kongsi (Penang) Registered [1983] 1 LNS 18 FC ***(refd)***

Lee Choo Yam Holdings Sdn Bhd & Ors v. Khoo Yoke Wah & Ors [1990] 1 CLJ 1152; [1990] 2 CLJ (Rep) 327 HC ***(refd)***

Redland Bricks Ltd v. Morris and Another [1969] 2 All ER 576 ***(refd)***

A *Sadler v. Whiteman [1910] 1 KB 868* ***(refd)***
Smith v. Anderson [1880] 15 Ch D 247 ***(refd)***
Sukhinderjit Singh Muker v. Arumugam Deva Rajah [1998] 2 CLJ Supp 110 HC ***(foll)***
Wong Yoon Yar v. Lin Yin Thai & Ors [1987] 1 LNS 21 SC ***(refd)***

B **Legislation referred to:**
Partnership Act 1961, ss. 3(1), 6, 28(1), 30, 34(1)(c), 36, 40, 41, 46

Other source(s) referred to:
Halsbury's Laws of Malaysia, vol 9, p 417
C *Lindley & Banks on Partnership,* 17th edn, p 695

For the plaintiffs - Alice Imelda Chin; The Chambers of Alice Imelda Chin
For the defendants - Raymond Szetu (Rebecca Thong with him); M/s Ting & Jubilee

D *Reported by Suhainah Wahiduddin*

JUDGMENT

E **Abdul Rahman Sebli J:**

The Facts

[1] The four ladies in this action are all advocates and solicitors of the High Court of Sabah and Sarawak. On 1 December 2004 F the first plaintiff founded the law firm of Messrs United Law Firm ("the firm") whose place of business was at Lot 26-1, 1st Floor, Block C, Lorong Pokok Kayu Manis, Damai Plaza Phase I Kota Kinabalu, Sabah. She was later joined by the first defendant as partner effective 1 January 2007 and this was followed by the G second plaintiff and the second defendant in August 2010 whereby a Memorandum of Understanding cum Partnership Agreement ("the partnership agreement") was signed between them on 12 August 2010.

H **[2]** Things did not work out the way the four partners had hoped for. Barely five months into the partnership the two defendants decided to leave the firm with the intention of setting up a legal firm of their own. The parting of ways was acrimonious. A series of untoward incidents occurred which came to a head on I 27 January 2011 when the first defendant assisted by four employees of the firm carted away more than 600 files and other documents from the business premises of the firm. It was a point of no return for the partners.

The Claim And Counterclaim

[3] The plaintiffs' claim, *inter alia*, is for the following reliefs:

(a) that the defendants be ordered to deliver up all the 600 files.

(b) that the defendants be ordered to make a public apology to the plaintiffs, to be published in a half page issue of the Daily Express in terms approved by the plaintiffs.

(c) a declaration that the plaintiffs as continuing partners of United Law Firm are entitled to carry on their legal practice under the name and style of "United Law Firm".

[4] The defendants dispute the claim and counterclaim, *inter alia*, for the following reliefs:

(a) a declaration that the firm "United Law Firm" had been dissolved by mutual consent of all its previous partners since 17 January 2011.

(b) an order restraining the plaintiffs from practising and continuing to practice law including carrying out any conveyancing work under the name of "United Law Firm".

(c) an order that a receiver and manager be appointed to wind up the business of "United Law Firm".

The Key Issue

[5] The key issue on which the other issues rest is whether the dissolution of the partnership resulted in the dissolution of "United Law Firm" as a going concern. Section 3(1) of the Partnership Act 1961 ("the Act") defines a partnership as follows:

> Partnership is the relation which subsists between persons carrying on business with a view to profit.

[6] Section 6 of the Act further provides:

> Persons who have entered into partnership with one another are, for the purposes of the Act, collectively a firm, and the name under which their business is carried on is called the firm-name.

[7] Thus a firm is a composition of individuals who entered into a partnership with one another to carry on business with a view to profit. It is the individual partners that constitute the firm, not the namesake. The firm name is merely to give a commercial face

to the partnership. Unlike a company, a firm has no legal identity of its own separate and distinct from the individual partners that constitute the partnership. As such, a firm has no capacity to transact any business in its own name. It is the partners who are vested with such capacity. A plaintiff who sues such partners in their firm name sues them individually just as much as if he had set out all their names: *Keow Seng & Company v. Trustees of Leong San Tong Khoo Kongsi (Penang) Registered* [1983] 1 LNS 18; [1983] 2 MLJ 103 per Raja Azlan Shah LP. The firm may be a sole proprietorship but for austerity the sole proprietor may call his business enterprise "Ali Baba & Co".

[8] The relation between the partners, if it is not a sole proprietorship is a relation bound by contract express or implied. In *Smith v. Anderson* [1880] 15 Ch. D 247 at p. 273 James LJ defined an ordinary partnership as follows:

> A partnership composed of definite individuals, bound together by contract between themselves to continue combined for some joint object.

[9] The partnership in the present case is a partnership at will within the meaning of s. 28(1) of the Act as no fixed term was agreed upon for its duration and it was for an indefinite period. The following passage in *Halsbury's Laws of Malaysia,* vol. 9 at p. 417 is relevant:

> Where there is no fixed term agreed upon by the partners for the duration of the partnership, this is termed a partnership at will, and any party may determine the partnership at any time on giving notice of his intention to do so to all the remaining partners. When this happens, it will usually bring about a dissolution of the partnership.

Whether Partnership Or Firm Dissolved

[10] There is no dispute and indeed there is incontrovertible evidence that as at 17 January 2011 the partnership had been dissolved. The first plaintiff herself by her letter of even date had notified the Deputy Registrar of the High Court that "United Law Firm" had been dissolved. In the same letter she also informed the Deputy Registrar that the firm name of "United Law Firm" had been changed to "United Law Group". Clearly therefore the first plaintiff had no wish to continue practising under the firm

name of "United Law Firm". At the trial the first plaintiff confirmed the dissolution of the partnership when she testified in cross-examination:

> Q: Put that at the time of the proposed settlement agreement of 20 January 2011, the partnership between the parties had already ended/dissolved either by: (i) mutual agreement on 16 January 2011 (as alleged by the defendants) (ii) or by defendants' notice of intention to retire on 16 January 2011 (as alleged by the plaintiffs).
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> A: Yes.

[11] She had earlier testified as follows:

> We never deny that the partnership between four of us have been dissolved or ended but not the firm as we are the continuing partners.

[12] So the dispute is not over the question whether the partnership had been dissolved but whether the dissolution of the partnership resulted in a dissolution of the firm. In this regard the sheet anchor of the plaintiffs' argument is that when the two defendants retired from the firm what was dissolved was the partnership only and not the firm as a going concern. It was contended that since there was no intention by the partners to dissolve the business of the firm, the firm survived the dissolution and that being the "remaining partners", the plaintiffs can continue to practise under the firm name of "United Law Firm". What I can understand from the plaintiffs' argument is that their concern is not over the use of the firm name as such but over the right to continue practising under the firm name of "United Law Firm" and not any other name, including "United Law Group". I would have thought that a rose by any other name would smell as sweet.

[13] It was emphasised that "dissolution of partnership" and "dissolution of firm" are two different terms. It was submitted that being the founder of "United Law Firm" the first plaintiff has a special right to use the firm name upon dissolution of the partnership. The analogy used is that she is the 'owner of the house' and the other partners mere 'passers by'.

[14] Obviously what learned counsel is saying is that the firm has a life of its own and does not owe its existence to the subsistence of the partnership. With due respect this is a misconception and goes against established principle that a partnership firm is not a

A legal entity in law and that the firm name is a mere expression and not a legal entity. I am of course echoing what Farewell LJ said in *Sadler v. Whiteman* [1910] 1 KB 868, 889 as follows:

> The fallacy is to say that a partner in a firm does not, but the
> B firm does, carry on business. In English law a firm as such has no existence; partners carry on business both as principals and as agents for each other within the scope of the partnership business; the firm name is a mere expression; the firm name is a mere expression, not a legal entity, although for convenience under Order XLVIII. A it may be used for the sake of suing and being
> C sued.

[15] This observation was cited with approval by the Federal Court in *Keow Seng & Company (supra)*. In *Wong Yoon Yar v. Lin Yin Thai & Ors* [1987] 1 LNS 21; [1987] 2 MLJ 714 at p. 715 Lee Hun Hoe CJ (Borneo) observed:

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> There is still a popular misconception prevalent amongst illiterate tradesmen in this country that a firm or "chop" is an entity. That is not so. Unlike a company registered under the Companies Act which is itself a legal entity, a firm or "chop" although it may be
> E registered under other legislation is nothing more than a "convenient name or label for a number of persons carrying on business in partnership or for that matter for a sole proprietorship carrying on business. Those persons could use their own individual names if they wished followed by some such words as "trading under the style of" whenever they transacted any
> F business. But this might well be inconvenient, especially if there were numerous partners. The obvious solution is to select one short name to include all partners.

[16] Since in reality a firm and the partners are one and the
G same entity it follows that when a partnership is dissolved, the business of the firm must come to an end because once the partnership is dissolved there is no longer any relation "which subsists between persons carrying on business with a view to profit" within the meaning of s. 3 and s. 6 of the Act. Persons
H carrying on business here means all the partners and not just the "remaining partners" because a partnership by definition is a business relation which subsists between the partners, in this case, the four parties to the partnership agreement. When the relation ceases to subsist by reason of dissolution the partnership ceases
I to exist. *A fortiori*, the firm must likewise cease to exist. It is like a marriage. Once it is dissolved the marriage comes to an end.

Whether Dissolution 'Technical' Or 'General'

[17] Learned counsel for the plaintiffs contended that the dissolution of the firm was only a 'technical' dissolution of the partnership and not a 'general' dissolution of the firm and that therefore the plaintiffs could continue to carry on with their legal practice under the firm name of "United Law Firm". Reliance was placed on the following passage in *Lindley & Banks on Partnership* (17th edn.) at p. 695:

> ... as a matter of law, a change in the composition of a partnership results in a dissolution of the existing firm and the creation of a new firm, in such a case the new firm will usually take on the assets and liabilities of the old without any break in the continuity of the business. This is often referred to as a 'technical'"dissolution and is usually, but not always, the result of agreement.
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> In contrast, the expression of 'general' dissolution is used to denote a dissolution involving a full scale winding up, which may well be brought about at the instance of one partner, against the wishes of the others.

[18] In *Sukhinderjit Singh Muker v. Arumugam Deva Rajah* [1998] 2 CLJ Supp 110; [1998] 2 MLJ 117 Arifin Jaka J held, on the facts of the case, that the dissolution of the firm was a 'general' dissolution and not a 'technical' dissolution because the plaintiff had made his intention clear to dissolve the partnership and that he had failed to prove that there was an implied agreement that the partnership could not be dissolved by notice given by the plaintiff. Had the defendant succeeded in proving that fact, the dissolution would only have been a 'technical' dissolution.

[19] Going by the rationale in that case, similarly in the present case since the partners had made their intention clear to dissolve the partnership and the plaintiffs have failed to produce any evidence to prove the existence of any agreement to avoid dissolution by operation of s. 34(1)(c) of the Act, the dissolution was a 'general' dissolution and not a 'technical' dissolution. For myself the distinction between 'technical' and 'general' dissolution is unnecessary and confusing. Either there is dissolution or there is no dissolution. There cannot be different shades of dissolution. *The Concise Oxford English Dictionary* (11th edn.) defines the word "dissolution" to mean:

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> the formal ending of an assembly, partnership, or official body; the action or process of dissolving or being dissolved; disintegration; decomposition archaic death; debauched living; dissipation.

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[20] In the English Court of Appeal case of *Hudgell Yeates & Co v. Watson* [1978] 2 WLR 661 a partner in a firm of solicitors accidentally failed to renew his practising certificate, thereby rendering himself unqualified. Since a partnership between a solicitor and an unqualified person was, as the law then stood, prohibited by statute, the partnership became illegal and was automatically dissolved but the court held that the remaining innocent partners could lawfully carry on the business of the partnership. The equivalent provision in the Act that would cover such situation is s. 36 which provides as follows:

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> A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

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[21] The dissolution of the partnership in *Hudgel & Yeates* (*supra*) cannot be considered a 'technical' dissolution as contended by learned counsel for the defendants because the simple fact is the partnership was automatically dissolved by operation of law on the disqualification of a partner. There is no question of the partnership being only 'technically' dissolved. Even if the decision can be construed as a decision on 'technical' dissolution, the plaintiffs' case stands on an entirely different footing. The dissolution of the partnership was not a result of the disqualification or death of a partner. The truth of the matter is all four partners had declared their intention not to continue with the partnership and a notice pursuant to s. 34(1)(c) of the Act had in fact been issued, triggering a dissolution by force of law. Indeed the first plaintiff confirmed in cross-examination that on 16 January 2011 all the partners of the firm mutually agreed to retire as partners, resulting in a dissolution of the partnership. There is therefore nothing 'technical' about the dissolution of the firm. It was a straightforward dissolution under s. 34(1)(c) of the Act.

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Section 34

[22] Section 34 of the Act provides as follows:

> 34(1) Subject to any agreement between the partners, a partnership is dissolved:
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> (a) if entered into for a fixed term, by the expiration of that term;
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> (b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or
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> (c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.
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> (2) In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

[23] Although they did not say so in so many words it seems to be the position of both the plaintiffs and the defendants that this provision allows for the use of the firm name after dissolution if the partners consent to it. I am unable to accede to this argument if what is meant is the carrying on of the business of the firm after dissolution. Section 34 speaks of events that trigger the dissolution of a partnership subject of course to any agreement between the partners. It has nothing to do with what the partners can or cannot do after the dissolution. What the partners can or cannot do after the dissolution is regulated by ss. 40, 41 and 46 of the Act and not by s. 34. Section 34 must be read subject to s. 40. Like s. 30 there is nothing in s. 40 that permits business transactions to be carried out in the name of the firm other than for the purposes specified therein.

[24] The phrase "subject to any agreement between the partners" appearing in s. 34 of the Act means subject to any agreement between the partners prior to dissolution, not after. The agreement can be any agreement allowed by law, for example an agreement between the partners that the partnership was not to be dissolved upon the retirement or death of a partner. They can even agree that mere service of the notice of dissolution by a partner shall not be sufficient to dissolve the partnership. The absence of such agreement leads to a dissolution by operation of law: *Lee Choo*

Yam Holdings Sdn Bhd & Ors v. Khoo Yoke Wah & Ors [1990] 1 CLJ 1152; [1990] 2 CLJ (Rep) 327; [1990] 2 MLJ 431, a decision of the High Court affirmed by the Supreme Court.

[25] In the present case the partnership agreement contains no such agreement. Therefore dissolution took effect after the notice of intention to dissolve was given by the defendants. Learned counsel for the plaintiffs pointed to cl. 13 of the partnership agreement to argue that the partners' intention was that dissolution of the partnership consequent to the retirement of a partner does not have the effect of dissolving the business of the firm. Clause 13 is couched in the following terms:

> Should any PARTNER decide(s) to dispose his/her/their shares and interest in the Firm, option shall be given to the remaining PARTNERS to acquire the same at a consideration sum to be mutually agreed upon by the interested PARTNERS. New partner(s) (if any) shall be first consented to by PARTNERS. All Firm's assets shall remain with the Firm including but not limited to the Firm's clients.

[26] With due respect there is nothing in cl. 13 to warrant such construction. In the first place the clause is not the kind of agreement contemplated by s. 34 of the Act, which relates to an agreement to avoid dissolution of a partnership. Once dissolution has taken place it is not for any partner to decide for himself that the firm could continue with its business. Any agreement to be effective must be reached before dissolution, otherwise it is all water under the bridge. An agreement to avoid dissolution under s. 34 must be clear and unambiguous, which cl. 13 is not.

[27] The importance of a settlement agreement to resolve disputes involving dissolution of a partnership is illustrated by the Brunei Court of Appeal case of *Ang Swee Chuan v. Lim Teng Huan* [1992] 1 CLJ 529; [1992] 4 CLJ (Rep) 177. There the court had to consider whether by the terms of the settlement agreement, the parties intended to dissolve the partnership entirely or that the dissolution was intended to be 'limited' or 'confined' thereby allowing the remaining part of the partnership to continue. But it seems clear from the judgment that the settlement agreement in that case was reached before the dissolution took effect.

[28] Even if I am wrong on s. 34 and that the provision does allow for such agreement after dissolution, there is in any event no evidence that the partners had agreed to allow the plaintiffs to

continue practising under the firm name of "United Law Firm". On the evidence I am not satisfied that a concluded agreement had been reached between the partners on the use of the firm name after the dissolution. The burden is on the plaintiffs to prove this fact. Proposals and counter proposals were exchanged between the parties but nothing concrete was decided. In particular there was no agreement on who should be the "continuing partners". As learned counsel for the defendants aptly put it, all partners were "outgoing partners".

[29] Further, it was conceded by learned counsel for the plaintiffs that it is not the plaintiffs' case that the first defendant had given her consent or otherwise for the continued use of the firm name. Rather, the plaintiffs' case, as contended by the first plaintiff in her testimony is that, she does not need the defendants' permission to continue carrying on business under the firm name of "United Law Firm".

[30] There is also evidence by the defendants that the first plaintiff told them that nobody could use the firm name after the dissolution. This evidence was not challenged at all in cross-examination and is therefore deemed to be admitted: *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors* [1995] 3 CLJ 639 CA. The plaintiffs are therefore estopped from contending that there was such agreement by the defendants.

Section 40 Of The Act

[31] The plaintiffs' argument that despite the dissolution of the partnership the firm could still carry on with business as usual is partly true. Section 40 of the Act allows for a limited business activity in such situation. It provides, *inter alia*, as follows:

> After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

[32] The effect of this provision is that after the partnership is dissolved the partners can continue to transact business in the name or on behalf of the firm but only for the limited purpose of winding up the affairs of the partnership and to complete unfinished transactions, and no others. This means upon completion of the unfinished business, no further dealing in the

A firm's name is permitted. This is a statutory prohibition and the partners cannot contract out of it. What is left to be done is to wind up the partnership.

[33] The fact that on dissolution a partner has the right to apply
B for a winding up of the firm's business and affairs dispels any notion that the "remaining partners" have the right to continue with the business of the firm. That right will be repugnant to the right of winding up, which is a right accorded by s. 41 of the Act. In fact this is one of the reliefs sought by the defendants in this
C action. s. 41 provides as follows:

> On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and
D liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.
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Delivery Of Files

[34] With regard to the plaintiffs' claim for delivery of the 600 files, I am inclined to agree with learned counsel for the
F defendants that the claim is in essence a prayer for a mandatory injunction. However the plaintiffs have not identified or led evidence on the identity of the "600 files more or less and other documents" that they want the court to order the defendants to deliver up and to whom the files and documents are to be
G delivered. The claim therefore lacks precision and must be rejected. In *Redland Bricks Ltd v. Morris and Another* [1969] 2 All ER 576 Lord Upjohn said at p. 580:

> If in the exercise of its discretion the court decides that it is a proper case to grant a mandatory injunction, then the court must
H be careful to see that the defendant knows exactly in fact what he has to do and this means not as a matter of law but as a matter of fact, so that in carrying out an order he can give his contractors the proper instructions.

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[35] The learned judge then went on to cite *Fishenden v. Higgs and Hill, Ltd* [1935] All ER (Rep) 435 where Maugham LJ summed up the principle as follows at p. 450:

> I should like to observe in the first place, that I think a mandatory injunction, except in very exceptional circumstances, ought to be granted in such terms that the person against whom it is granted ought to know exactly what he has to do.

[36] In any event the files were sorted, tagged and removed openly and done in the presence of the plaintiffs' solicitor Ms. Alice Imelda Chin herself. It was not done behind the plaintiffs' back, unlike what the partner did in *Floydd v. Cheney & Anor* [1970] 1 Ch 602. The removal of the files was therefore not wrongful in the circumstances.

Demand For Public Apology

[37] The plaintiffs have also prayed for an order that the defendants do publish a public apology to them. However they failed to plead any cause of action to justify the grant of the order, ie, libel or slander. The claim is therefore unsustainable and ought to be refused. In *Haji Mohd Dom v. Sakiman* [1955] 1 LNS 26 Mathew CJ observed as follows:

> Nowhere in the pleadings is it alleged that the agreement was in the nature of a document of loan, and the case never proceeded on that basis. I think it is clear that a judge is bound to decide a case on the issues on record and that if there are other questions they must be placed on the record, which in this case they were not, *Blay v. Pollard & Morris* [1930] 1 KB 628 (at p. 634).

Conclusion

[38] The key issue in this case must be decided in favour of the defendants for the reason that "United Law Firm" had properly been dissolved along with the dissolution of the partnership. Where a partnership firm has ceased to exist it is idle to argue that the "remaining partners" can still carry on with the business of the firm and in its name. It is therefore untenable for the plaintiffs to continue practising under the firm name of "United Law Firm" as a going concern. The plaintiffs' claim was accordingly dismissed and the defendants' counterclaim allowed in terms.